BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2020-229-E- ORDER NO. 2021-563

AUGUST 10, 2021

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| IN RE: | Dominion Energy South Carolina, Incorporated's Establishment of a Solar Choice Metering Tariff Pursuant to S.C. Code Ann. Section 58-40-20 (See Docket No. 2019-182-E) | ) ) ) ) | ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR RECONSIDERATION OR REHEARING |

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition of Dominion Energy South Carolina, Incorporated ("DESC,") for Rehearing or Reconsideration (the "Petition") of Commission Order No. 2021-391 (the "Order"), or alternatively, for clarification for certain findings in the Order.

## I. PROCEDURAL HISTORY

The Commission, consistent with the requirements of Act 62, established utility-specific dockets to hear testimony, consider utility-sponsored proposals, and establish solar choice metering tariffs for applications received after May 31, 2021, consistent with the mandates of Sections (F), (G), and (H) of S.C. Code Ann. § 58-40-20.

In order to hear testimony, receive evidence, and consider the NEM tariffs proposed by DESC in this docket (collectively, the "Solar Choice Tariffs"), the Commission convened a virtual hearing on this matter on February 23, 2021, in the hearing room of the Commission with the Honorable Justin T. Williams presiding as Chairman. The hearing concluded on March 2, 2021, and the Commission issued the Order on May 29, 2021.

On June 8, 2021, DESC filed a Petition for Reconsideration or Rehearing, which argued or alleged seven errors in the Commission's decision in the Order. Reponses to the Petition were filed by several intervening parties in the docket: a Joint Response was filed by South Carolina Coastal Conservation League, Upstate Forever, Southern Alliance for Clean Energy, Vote Solar, North Carolina Sustainable Energy Association, and Solar Energy Industries Association on June 17, 2021, with a single-party Response filed by Alder Energy Systems, LLC, on June 20, 2021.

## II. LAW

Pursuant to S.C. Code Ann. § 58-27-2150, a party may apply to the Commission for a rehearing in respect to any matter determined in the proceeding.

> After an order or decision has been made by the Commission any party to the proceedings may within ten days after service of notice of the entry of the order or decision apply for a rehearing in respect to any matter determined in such proceedings and specified in the application for rehearing, and the Commission may, in case it appears to be proper, grant and hold such rehearing. The Commission shall either grant or refuse an application for rehearing within twenty days, and a failure by the Commission to act upon such application within that period shall be deemed a refusal thereof. If the application be granted the Commission's order shall be deemed vacated, and the Commission shall enter a new order after the rehearing has been concluded.

Additionally, the Commission has held that:

> The purpose of the petition for rehearing and/or reconsideration is to allow the Commission the discretion to rehear and/or reexamine the merits of issued orders, pursuant to legal or factual questions raised about those orders by parties in interest, prior to a possible appeal.

In re: South Carolina Electric & Gas Co., Order No. 2013-5 (Feb. 14, 2013).

S.C. Code Ann. Regs. 103-854(A) provides that a Petition for Rehearing or Reconsideration shall set forth clearly and concisely the factual and legal issues forming the basis for the petition, the alleged error or errors in the Commission Order; and the statutory provision or other authority upon which the petition is based. S.C Code Regs. 103-854 states:

> Unless otherwise provided by law, no cause of action shall accrue in any court of competent jurisdiction to vacate or set aside any Order of the Commission, either in whole or in part, unless a petition for rehearing or reconsideration and proof of service are filed with the Commission, and an Order has been issued disposing of the matter.
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> A. Form, Contents of Petition for Rehearing or Reconsideration. All petitions for rehearing or reconsideration shall conform to R. 103-825.
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> B. Time limit for filing a petition for rehearing or reconsideration. **Except as otherwise provided by S. C. Code Ann., Section 58-5-330, 58-9-1200, 58-11-550, 58-27-2150 (1976),** any party of record may, within 20 days after the date of receipt of Order, petition the Commission for rehearing or reconsideration. A Petition for Reconsideration shall be subject to the same statutory parameters as a Petition for Rehearing.
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> C. Action by the Commission. The Commission must act upon the petition for rehearing or reconsideration within thirty (30) days after such petition is filed except as otherwise provided by S. C. Code Ann., Section 58-5-330, 58-9-1200, 58-11-550, 58-27-2150 (1976). Failure to act within this time period shall be deemed a denial of the relief sought in the petition.
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> D. Effect of Filing a Petition. Filing a petition shall not excuse or delay compliance with an Order issued by the Commission, unless specifically provided by the Commission.

S.C Code Ann. Regs. 103-854 (2012) (emphasis added).

## III. PETITIONER'S ARGUMENTS

DESC makes seven arguments in its Petition, as follows:

Argument 1:

> The Order's prohibition on recovery of avoided cost credits under the Fuel Clause violated South Carolina law and PURPA principles relating to energy supplied by Qualifying Facilities.[1]

Argument 2:

> The Order did not make clear that DESC owns the RECs to the power it must take from rooftop solar customers.[2]

Argument 3:

> The Order improperly characterized elimination of the cost shift as DESC recovering lost revenue and fails to accurately represent DESC's measurement of the same.[3]

Argument 4:

> The Order erred in finding that the Subscription Fee and Basic Facilities Charge (i) are unsupported by the record and (ii) penalize customers for behind the meter consumption in violation of Act 62.[4]

Argument 5:

> The Order applied the preponderance of the evidence standard unevenly.[5]

Argument 6:

> The Order erred in its interpretation of the requirement to eliminate "any" cost shift to the greatest extent practicable.[6]

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[1] DESC Petition (https://dms.psc.sc.gov/Attachments/Matter/879b314b-8daf-4c54-b713-7a278b4fb377) at page 5.
[2] DESC Petition at page 9.
[3] DESC Petition at page 10.
[4] DESC Petition at page 14.
[5] DESC Petition at page 17.
[6] DESC Petition at page 22.

Argument 7:

> The Order relied heavily upon certain "benefits" of solar that have not been quantified or recognized by this Commission.[7]

## IV. DISCUSSION

As a threshold issue, the Commission finds that the Petition was filed timely pursuant to and consistent with S.C. Code of Regulations 103-845 and S.C. Code Ann. Section 58-27-2150 and is therefore appropriate for full consideration by the Commission.

### A. Argument 1: Prohibition of Recovery of Avoided Costs

Regarding Argument 1, the Commission finds that DESC raises a legitimate concern that merits reconsideration and clarification by the Commission. DESC noted the following language – which did not relate to an Ordering Clause – in the Order:

> The Commission finds that DESC's proposal to recover avoided cost credits to solar customers as 'purchased power fuel expenses' under the fuel clause, even for solar exports it sells at retail rate, would allow the utility to more than double recover for its costs; it is reasonable to prohibit the utility from recovering avoided cost credits as purchased power fuel expenses for any solar exports sold at the retail rate.

Order at 25.

The Commission agrees with DESC that disallowing cost recovery for purchased power fuel expenses would be contrary to well-settled South Carolina law and principles of PURPA. Rather, to the extent that DESC is only seeking to recover avoided cost value for annual net excess generation (or net exports at the end of the annual netting interval)

[7] DESC Petition at page 24.

and is not seeking to recover the avoided cost value for all exports, the Commission finds rehearing and clarification necessary. These types of expenditures would be subject to application for recovery in the normal fuel proceedings related to DESC, which are conducted by the Commission on an annual basis. The Commission notes that South Carolina Coastal Conservation League, Upstate Forever, Southern Alliance for Clean Energy, Vote Solar, North Carolina Sustainable Energy Association, and Solar Energy Industries Association jointly do not object to this reconsideration and clarification in their Joint Response.[8]

The Commission finds, based on the evidence of the record, existing and established law, that it is appropriate and necessary to clarify that DESC is not prohibited from seeking recovery of the above-mentioned expenses.

### B. Argument 2: Ownership of Renewable Energy Credits

Regarding Argument 2, DESC requests clarification or, alternatively, rehearing on the issue of whether DESC owns the RECs associated with the net excess energy that the customer-generators deliver to DESC. The Commission finds that rehearing is not necessary, but that clarification may be helpful to the parties.

The Energy Freedom Act (the "Act") is silent on the issue of whether customer-generators retain the rights to the renewable attributes. The Commission finds that, in absence of clear direction in the Act, it is reasonable for the Commission to indicate who possesses the renewable attributes from customer-generators under the Solar Choice Tariffs approved by the Commission. DESC asserts that unbundling RECs from customer-

[8] Joint Response at page 8-10

generators renders the electricity "brown power." The Commission finds that this assertion is unpersuasive. The continued production of renewable power, with or without the attendant associated commoditized attributes is in the best interest of the state, in the public interest, and consistent with the Act. Allowing the customer-generator to retain ownership of such attributes does not nullify the benefits and is not inconsistent with law or regulation.

### C. Arguments 3, 4, 6 and 7: Alleged Improper Characterization of Cost Shift; Findings Related to Subscription Fee and Basic Facilities Charge; Interpretation of Elimination of Cost Shift Extent; Non-Quantified Benefits of Solar

Regarding Arguments 3, 4, 6, and 7 in the Petition, DESC restates factual and legal arguments that the Commission explicitly rejected in Order No. 2021-391, and the Commission finds it appropriate to not reiterate all points made in its Order. However, in the interest of transparency and completeness, the Commission addresses the Arguments briefly with reference to its Order as follows:

> Argument 3:
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> The Commission concludes that any definition of "cost shift" that is based exclusively on customer bill savings, or lost revenues to the utility as a result of customer-generators consumption of customer-generated energy behind the meter, or credits for excess generation is incomplete. As such, solar **customer bill savings are not an appropriate metric by which to exclusively measure potential cost shift**.

Order No. 2021-391 at page 16. (emphasis added reflected quoted language in DESC Petition)

The Commission notes that DESC's Petition extracts the above-quoted conclusory language, without the context and reasoning which is located immediately before and after

the quoted language in the Petition:

> Act 62 requires evaluating "cost shift" in two ways, as contemplated in the provisions of S.C. Code Ann. § 58-40-20(C) and (D). First, it must be considered based on a forward-looking, comprehensive evaluation of the "long-run" costs and benefits of solar, and the resulting impacts to utility system costs. And second, it must be evaluated based on the "cost of service implications of customer-generators on other customers within the same class, including an evaluation of whether customer-generators provide an adequate rate of return to the electrical utility compared to the otherwise applicable rate class when, for analytical purposes only, examined as a separate class within a cost of service study." S.C. Code Ann. § 58-40-20(D)(2). The information to conduct such an embedded cost-of service study is exclusively within the hands of the electrical utility. Therefore, Act 62 contemplates that a utility conduct such a study for purposes of evaluating any potential "cost shift" resulting from net metering programs.
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> [the language quoted by DESC, repeated above]
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> Because Act 62 removes the NEM DER Incentive as a cost recovery mechanism for NEM Solar Choice tariffs and prohibits electrical utilities from recovering lost revenues associated with customer-generators who adopt NEM Solar Choice tariffs, it is inappropriate to base cost shift solely on a utility's lost revenue from solar customers. S.C. Code Ann. § 58-40-20(I). Additionally, it would be improper to equate "cost shift" with reduced revenues to the electrical utility because such reduced revenues reflect only a short-term consequence of customer adoption of DERs and do not take into account the long-term benefits that accrue to the utility system.

Order No. 2021-391 at pages 15-16.

The Commission finds that its Order clearly and completely addressed why exclusively using a lost revenue analysis to quantify cost shift is deficient under Act 62 and in the judgment of the Commission. Rehearing or Reconsideration on this portion of the

Order is therefore unnecessary.

Argument 4:

> A solar tariff improperly penalizes behind the meter consumption if a customer-generator would pay more under the tariff than if they did not have solar, when considering the non-bypassable charges and fees on their utility bills and after accounting for the self-consumption of energy used behind the meter.

Order No. 2021-391 at page 67.

The Commission notes that DESC referenced this language in its Petition at pages 14 – 15, yet DESC asserts that the concept of a solar customer paying more with the generation facility than it would have paid without it does not amount to a penalty. The Commission disagrees and finds it axiomatic that a paradigm in which a customer would be paying more for exactly the same electrical usage – especially when having generation assets—amounts to a penalty.

Argument 6:

> Commission is directed to 'eliminate any cost shift to the greatest extent practicable' while at the same time . . . avoiding 'disruption to the growing market for customer-scale distributed energy resources,' and continuing market-driven, private investment in DERs across the state by reducing regulatory and administrative burdens to customer installation and utilization of onsite DERs. As such, Act 62 contemplates a framework for the adoption of solar choice tariffs that avoid disruption to the solar market and ensure continued customer access to solar options in ways that align the interests of all customers.

Order No. 2021-391 at page 14.

Whether Act 62 requires a complete elimination of cost shift, or whether it requires

elimination of cost shift *to the greatest extent practicable*, as the plain language of Act 62 reads, has been a topic of great concern and the subject of much testimony and debate in the proceeding. The record of this case is replete with the arguments for each interpretation of Act 62. The Commission, upon review of the entire record, continues to find that Act 62 requires a balancing of interests in order to effectuate the elimination of cost shifting "to the greatest extent practicable."

Argument 7:

> Witness Moore further testified that DESC's definition of cost shift is incorrect because it does not consider the benefits of rooftop solar. (Tr. p. 828). Witness Moore listed several ways that those benefits reduce utility costs and save money for all ratepayers, explaining that solar customers reduce fuel costs, provide a hedge against fuel volatility, generate avoided T&D benefits, and avoid generation capacity. Id. Regarding avoided generation capacity, Witness Moore explained that customers who install rooftop solar make room for new utility customers and reduce the need for DESC "to build new power plants, which are the most expensive part of the utility system." (Tr. p. 828, l. 19 – p. 829, l. 2).

Order No. 2021-391 at page 61.

The Order generally recognizes that there are additional benefits to solar generation beyond what has been quantified for consideration by DESC in this proceeding. DESC Witness Everett acknowledged the same, stating in response to Chairman Williams, "there are some benefits to non-solar users to have more solar development."[9] The Commission notes that Witness Beach and SACE, CCL, and Upstate Forever Witness Moore both gave extensive testimony indicating additional values attributable to solar that were not being

[9] Order No. 2021-391 at pages 52-53.

considered by DESC. For example:

It is clear in the record and the Commission decision in the Order that there were many deficiencies in DESC's valuation of the benefits of solar generation. Whether those values have been specified by the Commission, or whether they have been identified by the Commission via acknowledgement of opposing testimony, DESC still presented deficient valuation for solar and therefore could not prevail.

### D. Argument 5: Application of Preponderance of Evidence Standard

Unlike the other arguments made in the DESC Petition, Argument 5 claims that the Commission erred in weighing the evidence of record. Essentially the assertion DESC is making is that DESC presented a better case than anyone else and is entitled to a favorable judgment. The record in the case was built between February 23, 2021, and March 2, 2021, and resulted in a transcript of over 1,100 pages (not including pagination for prefiled testimony that was entered into the record, which would approximately double the transcript size). The record in this docket is considerable; the evaluation and decision based on the whole record resulted in an order that spans 100 pages. The Commission, in its judgment, weighed all the evidence from all parties in an unbiased and judicial manner, and DESC's assertion that the Commission improperly balanced the evidentiary standard is simply inaccurate.

## V. CONCLUSIONS

In consideration of the requests for relief raised in the Petition, the Commission considered all relevant facts, issues, positions, standards in the entire record within the context of existing applicable South Carolina and federal laws, and regulations. After

thorough review and consideration of the record in this proceeding, the Commission concludes as follows:

Regarding the first issue, the Commission concludes that it must reconsider and clarify that DESC is not prohibited from recovering avoided costs paid to rooftop solar customers via the Fuel Clause. To do otherwise would be legally inconsistent with South Carolina law.

Regarding all other issues, the Commission concludes that DESC is not entitled to reconsideration or rehearing beyond what is included in this Order.

**IT IS THEREFORE ORDERED:**

1. The Commission clarifies that DESC is not prohibited from recovering avoided costs for purchased power in the annual fuel proceedings.

2. Other than as specified in Ordering Clause 1 and in this Order, the Petition for Rehearing or Reconsideration is denied.

3. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

Justin T. Williams, Chairman
Public Service Commission of
South Carolina